

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

72/102
NO PROTEST REQUIRED
Please copies to District

Person to Contact: [REDACTED]

Date [REDACTED]

Telephone Number: [REDACTED]

Surname [REDACTED]

Refer Reply to: [REDACTED]

Date: [REDACTED]

E.I.N.: [REDACTED]

K.D.O.: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of [REDACTED]
Your purpose as stated in your articles of incorporation is:

"(a) to protect the natural environment within [REDACTED] through education, advocacy, and where necessary, litigation, *litigation is not our sole purpose* [/.]we are not a law firm. (Italicized portion handwritten into articles and initialed by [REDACTED]).

(b) to assist local grassroots environmental organizations in the protection of local areas through lawful means, and

(c) to do any other lawful acts or things incidental or connected with the advancement of these goals.

You have described yourself as a non-profit public interest organization which counsels and represents groups and individuals concerned with the preservation and improvement of the environmental conditions in their communities from dangerous and burdensome environmental hazards through effective yet inexpensive legal avenues. You believe that environmental justice should be available to all people regardless of race, gender or age, and that by utilizing your [REDACTED] techniques you are able to effectively promote the interests of the environmental community.

You state that your focus is on four main issues: The Emergency Planning and Community Right to Know Act (EPCRA),

[REDACTED]

Environmental Justice, Land use and development issues, and General Legal Advice and Services pertaining to environmental issues.

EPCRA is a federal law giving the community the ability to monitor a plant's toxic releases, emergency preparedness, and on-site chemical inventory. Certain industries and other facilities, such as hospitals, are required by law to submit detailed forms stating the amount of hazardous chemicals being released into the environment, the name of the chemicals involved and their side effects, and where the storage and/or dumping is taking place. You state that you will assist the community in obtaining such information. If there is a problem you state that you will actively pursue such companies until chemicals are reported and fines imposed on those companies not in compliance.

Citizens of low income neighborhoods experience a wide variety of economic, social and institutional problems. They also suffer disproportionately from environmental hazards which affect their health, safety and general well being. Such communities lack the financial and political power to better their situations. Environmental justice is the remediation of such inequities. You believe that clean air, clean water and a clean environment is an innate right which belongs to everyone regardless of race, gender, or social status.

You will help to meaningfully critique the environmental impact created by government and private development projects that require permits or approvals to force the government to take the proverbial "hard look". (Litigation through use of Article 78's)

You state that you provide legal advice and services pertaining to environmental issues, and that your work is tailored to citizen groups with the goal of community empowerment. Some of the services that you will provide include litigation, incorporation of non-profit groups, legal forms and checklists, explanation of law and government structure, representation at public hearings, and mediation.

You state that you help the community to become a meaningful participant in the protection of the environment by demystifying both the law and science. Strategies are creatively forged using resources and experiences from within and without the community. You state that whether it be for a one time inquiry or taking a case all the way to the Supreme Court, you will be there to aid and abet the community.

Your expenses include; photo-copier, general supplies,

[REDACTED]

computer rental, computer services, computer software, conference fees, transportation, lab fees, scientific equipment, lab services, and expert witnesses. In addition, all compensation will be paid to your Executive Director/Founder. You list no other salaried employees.

You have provided the following to describe and explain your sources of income:

FEE SCHEDULE FOR SERVICES PROVIDED BY [REDACTED]

Fee of \$[REDACTED] provides the following services:

Preparation of Article 78 petition (notice of petition order to show cause)
Attorney Affirmation
Supporting affidavits

Transportation costs are additional

Additional Fees and services are not included in the original \$[REDACTED].

Purchase of Index Number (Needed to initiate court action) \$[REDACTED]
Request for Judicial Intervention (RJI) \$[REDACTED]

Service Upon Parties (service of papers by a licensed server \$[REDACTED] and proof of process to the court)

Incorporation of Non-Profit Groups \$[REDACTED]-\$[REDACTED] plus filing fees

501(c)(3) Applications \$[REDACTED] plus filing fees

Legal Action for Freedom of Information Request \$[REDACTED]

Law Seminars and Workshops \$[REDACTED]-\$[REDACTED] plus workshop materials and travel expenses

General Environmental lawsuits and actions \$[REDACTED]/hour-[REDACTED]
\$[REDACTED]/hour-Assistants.

In response to our request for additional information to clarify your activities, you stated that (as of [REDACTED], you have had no receipts or expenditures since incorporation ([REDACTED])).

Section 501(c)(3) of the Code provides for the exemption from

Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that an organization cannot be exempt under section 501(c)(3) of the Code unless it meets both an organizational and operational test. That is, the organization must be both organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(3)(i)(b) of the regulations defines the term "educational" as including the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including relief of the poor and distressed.

Rev. Rul. 69-161, 1969-1 C.B. 149, discussed a nonprofit legal aid society that was formed and operated for the sole purpose of providing free legal services to indigent persons otherwise financially incapable of obtaining such services. It was supported by contributions from members of the local bar association and the general public. Expenditures were for salaries and office expenses. It was held that the organization's provision of free legal services to persons otherwise financially incapable of obtaining such services constituted relief of the poor and distressed, and that the organization was exempt from Federal income tax under section 501(c)(3) of the Code.

In Rev. Rul. 80-278, 1980-2 C.B. 175, it was held that an organization that instituted and maintained environmental litigation as party plaintiff, was operated exclusively for charitable purposes and qualified for exemption under section 501(c)(3) of the Code. Its activities included educational activities within the meaning of section 501(c)(3). Its principal activity, however, was instituting litigation as a party plaintiff under state and federal environmental legislation.

The rationale for this holding was based on the fact that the promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit. See, e.g., the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 (1976). See also Rev. Rul. 76-204, 1976-1 C.B. 152, and the authorities cited therein. Thus, the organization's overall purpose was held to be charitable.

This ruling also discussed the three situations in which the

Service had previously recognized organizations that engaged in litigation as being described in section 501(c)(3): (1) legal aid societies providing legal assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) organizations operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) public interest law firms providing legal representation on issues of significant public interest (Rev. Rul. 75-74, 1975-1 C.B. 152, Rev. Rul. 75-75, 1975-1 C.B. 154, Rev. Rul. 75-76, 1975-1 C.B. 154, Rev. Rul. 76-5, 1976-1 C.B. 146, Rev. Proc. 71-39, 1971-2 C.B. 575, and Rev. Proc. 75-13, 1975-1 C.B. 662). These types of organizations generally had staff attorneys providing legal representation to outside clients or groups, as distinguished from the organization itself being the plaintiff in litigation. (Rev. Ruls. 75-74, 75-75, and 75-76 were respectively modified, revoked, and amplified by Rev. Proc. 92-59, 1992-2 C.B. 411, which also modified and superseded Rev. Procs. 71-39 and 75-13).

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

In order to qualify for exemption under section 501(c)(3) of the Code, you must satisfy both the organizational test and the operational test. Your articles of incorporation do not meet the organizational test in that they do not adequately describe or limit your purposes and powers, nor do they permanently dedicate your assets to section 501(c)(3) purposes in the event of your dissolution. However, your articles may be amended to overcome these obstacle if you otherwise meet the requirements for exemption by satisfying the operational test.

While your articles of incorporation specifically state that you are not a law firm, your activities cannot be distinguished from those of an ordinary law firm engaging in litigation, mediation, and counseling on behalf of the general public. Your fee schedule starts at \$[REDACTED] and goes upward from there. In addition, some of your activities and the related fees, such as incorporation

of non-profit groups (\$ [REDACTED] \$ [REDACTED]), and filing applications for exemption (\$ [REDACTED] plus filing fees) are inconsistent with public interest law firms or legal aid societies, or environmental litigation organizations contemplated by Congress in legislation such as The Clean Air Act, the Federal Water Pollution Control Act Amendments, or the National Environmental Policy Act of 1969.

You do not have a staff of attorneys used to provide legal representation to outside clients or groups. Instead, you retain the services of professionals such as [REDACTED], an [REDACTED] attorney with over [REDACTED] years experience in the areas of zoning, Article 78 proceedings, toxic torts, and SEQRA, and [REDACTED] salary for the services are \$ [REDACTED] for [REDACTED] hours per week (\$ [REDACTED] per hour) + \$ [REDACTED] per hour for [REDACTED]. [REDACTED] rates are comparable. All Advocacy and/or litigation appears to be on behalf of individuals who are referred to you by the [REDACTED], have worker's compensation cases involving toxic tort exposures, or you advocate for individual citizens (referred by clinics at local law schools) who have been affected by a waste transfer station that is emitting dust and other noxious emissions into the air. While you state that your client base consists primarily of those unable to pay for or retain legal counsel or advocacy, your fee schedule is inconsistent with that of a legal aid society whose services are offered free to indigents as discussed in Rev. Rul. 69-161, supra.

You can be distinguished from the organization discussed in Rev. Rul. 80-278, that instituted and maintained environmental litigation as a party plaintiff under state and federal environmental legislation. You can also be distinguished from the types of organizations discussed in Rev. Ruls. 69-161 (whose sole activity was providing free legal services to indigent persons), 73-285 (organizations operated to secure human and civil rights secured by law), and because you serve private interests, you can be distinguished from public interest law firms described in Rev. Proc. 92-59.

Therefore, we conclude that unlike the organizations discussed in the ruling: (1) You are not a legal aid society providing legal assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) you are not an organization operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) you are not a public interest law firm as described in Rev. Rul. 80-278 and Rev. Proc. 92-59, and therefore, your advocacy and subsequent litigation on behalf of individuals cannot be said to further a purpose described in section 501(c)(3) of the Code.

Accordingly, because you do not qualify as a public interest law firm, a legal aid society, or an organization engaging primarily in environmental litigation, and, because you have a substantial non-charitable purpose of providing legal services to the general public in a manner indistinguishable from proprietary law firms, thereby benefitting private parties who are not members of a charitable class (See, Better Business Bureau v. U.S., and Old Dominion Box Co., Inc. v. U.S., both discussed above), and you have not otherwise established that you are operated exclusively for charitable or educational purposes within the meaning of section 501(c)(3) of the Code, we cannot recognize you as exempt under that section.

Even if we were to rule that you were exempt, your exemption would be prospective from the date the Service received a substantially complete Form 1023 for consideration. The lack of revenues or expenditures would necessarily lead to a conclusion that no activity, charitable or otherwise had been conducted prior to [REDACTED]. Under these circumstances, you would be subject to a five (5) year advance ruling period to determine your foundation status under section 509.

You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted

Yellow

NO PROTECT RECEIVED
Release copies to District

-8-

Date [redacted]
Surname [redacted]

administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: [redacted]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[redacted]
[redacted]
Chief, Exempt Organizations
Technical Branch [redacted]

cc: DD, [redacted]
Attn: EO Group

cc: [redacted]

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[redacted]	[redacted]					
Surname	[redacted]	[redacted]					
Date	[redacted]	[redacted]					